

COVID-19: lay-offs, short time and redundancies – what you need to know

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This article aims to provide an understanding of employers' and employees' rights and obligations under Chapter 321A of the Employment Act of The Bahamas (as amended) in times such as the current COVID-19 pandemic.

Minimum entitlements

The Employment Act stipulates certain entitlements for employees in relation to matters such as:

- standard hours;
- entitlements to leave (legitimate time spent away from work);
- wages (although provisions for minimum wages are dealt with under a separate act);
- termination, including notice and pay;
- lay-offs and short time; and
- the employment of children and young persons.

This article focuses on the provisions of the Employment Act as they relate to lay-offs, short time and termination due to redundancy.

Lay-offs and short time

Under the Employment Act, an employer may lay off an employee or place an employee on short time if:

- a provision in the employment contract between the employer and the employee permits it;
- the employer has temporarily ceased, or intends temporarily to cease, to carry on the business for which the employee was employed;
- the employer has temporarily ceased, or intends temporarily to cease, to carry on business for which the employee was employed in the place where the employee was so employed;
- work of the particular kind for which the employee was hired is temporarily not required or is expected to temporarily not be required; or
- work of the particular kind for which the employee was hired is temporarily not required, or is expected to temporarily not be required, in the place where the employee was so employed.

With the implementation of the Emergency Powers (COVID 19) (2) Order 2020 (the Second COVID-19 Order) pursuant to the Emergency Powers (COVID 19) Regulations 2020 – which came into force in The Bahamas on 24 March 2020, initially expired on 31 March, 2020, was extended until 8 April 2020 and is expected to be extended for a further period (the relevant period) – with the exception of businesses deemed essential under Order 5 of the Second COVID-19 Order, every business whose employees cannot work remotely must cease their operations during the relevant period.

As a result of the Second COVID-19 Order, many of the businesses operating in The Bahamas are legally obligated to cease operations temporarily. The temporary cessation of operations of non-essential businesses permit such employers to either lay off employees or place employees on short time.

Before an employer can lay off an employee or place an employee on short time, the employer must supply the employee, the trade union recognised for purposes of bargaining on behalf of the employee (if there is one) and the minister of labour (the relevant persons) with a written statement

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of the facts that require the employer to lay off the employee or place the employee on short time. Information to be included in such notices includes:

- the number of employees affected;
- the category of employees affected; and
- the period during which the lay-off or short-time action is to be carried out.

Such notices should be given to the relevant persons for the purpose of consultation in respect of the proposed method of selecting employees to be laid off or placed on short time, the proposed method of carrying out the lay-off or short-time action and mitigating measures considered or taken in respect of those affected:

- at least one week prior to the lay-off or short-time action if 20 employees or fewer will be affected; and
- at least two weeks prior to the lay-off or short-time action where more than 20 employees will be affected.

Employees are considered to continue to be employed by the employer during the time that they are temporarily laid off or placed on short time.

Where an employee has been laid off for a continuous period of at least 12 weeks, such lay-off will be deemed a termination of employment due to redundancy.

Redundancies

Where an employee is made redundant, the employer must pay them a redundancy payment calculated in accordance with the following table.

Years of work/position	Notice/notice pay	Additional basic pay
12 months or more in a non-managerial position	Two weeks' notice or two weeks' basic pay instead of notice	Two weeks' pay (or prorated amount) for each year worked, capped at 24 weeks
Managerial or supervisory position (regardless of years worked)	One month's notice or one month's basic pay instead of notice	One month's pay (or prorated amount) for each year worked, capped at 48 weeks

In addition to the redundancy payment calculated as set out above, the employer must also distribute to the employee any vacation pay due to them under the Employment Act and their employment contract.

Where the employer has provided and fully paid a gratuity or pension for the employee, the employee must choose whether they wish to receive their redundancy pay or their gratuity or pension payment. The employee is not entitled to both.

The manner in which redundancy selections are made can, in certain circumstances, be challenged. To avoid this, employers should evenly apply reasonable criteria for redundancy to the pool of employees and judiciously weigh each situation before the selection is made.

Other considerations

Unemployment benefits

Under the National Insurance (Benefits and Assistance) Regulations (as amended), a person employed in The Bahamas who is younger than 65 years, is unemployed and has an interruption of earnings from their employment or is laid off and has suspension of earnings from their employment will be entitled to unemployment benefits at a rate of 50% of the sum of the weekly insurable wage or income on which contributions have been paid in respect of that employee divided by the number of weeks to which the paid contributions correspond (unemployment benefits).

In order for an employee to receive unemployment benefits, they must:

- submit a B.82 Claim for Unemployment Benefit Form to the National Insurance Board;
- be capable of work (including being legally able to work in The Bahamas);
- be available to work;
- have paid at least 52 contributions; and
- have been credited with at least 13 contributions in the 26, and seven contributions in the 13, contribution weeks immediately proceeding the first day of the employee's unemployment.

The employer must complete a Termination of Service/Lay-off Certificate (Form B.80) and provide it directly to the National Insurance Board or to the employee to submit with their Claim for Unemployment Benefit Form.

The relevant forms can be found on the National Insurance Board's website under the 'Library' tab.

It should be noted that during the relevant period, the National Insurance Board has suspended all face-to-face transactions. The relevant forms must be submitted to the National Insurance Board via email at 'customerservice@nib-bahamas.com'.

Holiday leave

As an alternative to lay-offs, it may be beneficial to both employers and employees for employees to take time off during the relevant period in the form of accrued holiday leave.

Other arrangements

In certain circumstances, it may be possible to alter the conditions of employment of certain employees during the relevant period in a manner that enables the employee to not be laid off but also not receive full pay. In these circumstances, employers and employees should work together to find amicable solutions that prove beneficial to both parties.

It is advisable that the terms of any temporary arrangement between an employer and an employee are documented.

Comment

In these unprecedented times, employers and employees alike need to be aware of their rights and obligations.

Employers should ensure that lay-off or short-time actions are taken with due consideration and in accordance with the Employment Act.

Employees should be prepared for the possibility of being laid off or put on short time and, understanding their options under the Employment Act and the National Insurance (Benefits and Assistance) Regulations, work with their employer to produce the best outcome for both parties.

For further information on this topic please contact [Dwayne Whyly](#) at Lennox Paton by telephone (+1 242 502 5000) or email (dwhyly@lennoxpaton.com). The Lennox Paton website can be accessed at www.lennoxpaton.com.

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